

Rule 8, Ariz. R. Crim. P.

Motion to Continue so that Assigned Prosecutor May Try the Case

Especially in a serious case, the State, like the defense, has a right to present its case effectively. Therefore, the State should be allowed to continue the case until the assigned prosecutor can try it.

The State asks this Court to continue this case for (time period) so that (Assigned Prosecutor's name), the assigned prosecutor, can present the State's case at trial, for the following reasons.

A trial court has the discretion to continue a case because the prosecutor is in trial in another case. *State v. Mendoza*, 170 Ariz. 184, 193, 823 P.2d 51, 60 (1992). And whether a trial court's exclusion of a continuance from the calculation of time under Rule 8 constitutes an abuse of discretion is a matter to be decided "upon the facts of each particular case." *Id.* at 194, 823 P.2d at 61.

Here, the State would be greatly prejudiced if this Court does not grant a continuance. A fair and effective presentation of the State's case depends on [Assigned Prosecutor]'s participation. A case of this magnitude should not simply be "handed off" to a prosecutor unfamiliar with the facts and uninvolved in the investigation and preparation of the case. To require the State to do so would severely limit the State's ability to meet its burdens of proof and persuasion.

Moreover, [Assigned Prosecutor] has established relationships with the [victim(s)/victim(s)'s next of kin]. A victim has the right to be treated with fairness, respect, and dignity. Ariz. Const. Art. II, § 2.1(1). A forced reassignment of this case from a fully prepared prosecutor to one unfamiliar with the case would certainly not be fair to the victim.

In contrast, the defendant will not be greatly prejudiced by a continuance. The defendant in the case [Assigned Prosecutor] is currently trying has been in custody since [date]. Here, the defendant has been in custody since [date], and [include facts regarding witness interviews, etc. if relevant]. In this matter, the last day for trial is [last day]. A continuance of at least [number of days or weeks] will not harm the defendant in any substantial way. The court's refusal to continue the trial, however, would severely hamper the State's ability to present an effective and fair case.

Moreover, if the Court does not grant the State's motion to continue, the "replacement" prosecutor would be placed in a position wherein he or she will most certainly violate E.R. 1.1 of the Rules of Professional Conduct, which mandates that lawyers provide competent representation. Competent representation requires the "legal knowledge, skill, *thoroughness and preparation reasonably necessary for the representation.*" E.R. 1.1 (emphasis added). The Comment to E.R. 1.1 recognizes that complex cases require more preparation:

The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

This case is a matter of great consequence to all parties involved; as such, it requires "elaborate treatment" and preparation by a prosecutor fully familiar with the facts, not a forced presentation by an unprepared prosecutor.

In addition to the duty that all lawyers have to act competently, prosecutors have an additional duty to seek justice, rather than to merely act as advocates for the State. *State ex rel. Romley v. Superior Court In and For County of Maricopa*, 184 Ariz. 223,

229, 908 P.2d 37, 43 (App. 1995). A duty to seek justice necessarily implies a duty to be prepared for trial, especially in a case as serious as this.

Finally, this Court must follow the “Rule 8 Guidelines” adopted by the Maricopa County Criminal Department Judges. Those Guidelines provide that, in the event an attorney cites “calendar conflicts” as grounds for a motion for continuance, the judge hearing the motion “should consult the lawyers and the judge presiding over the conflicting case to ascertain whether, in fact, an actual conflict exists.” (Petitioner’s Appendix, Item One). In the event of such a conflict, the Guidelines provide that the “judges assigned to the cases should consult one another and decide the case to be tried taking into consideration the age of the cases, the nature of the charges, the custody status of the defendants and any other relevant factors.”

For these reasons, the State asks this Court to grant the State’s motion to continue.